

CITY OF SEATTLE
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
(49 CFR PART 26)
UPDATED DBE PROGRAM
For Fiscal Year 2010

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OBJECTIVES/POLICY STATEMENT

Section 26.1, 26.23

The City of Seattle has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Seattle has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Seattle has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Seattle to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City's policy:

- 1) To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- 2) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- 3) To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- 4) To ensure that only firms that fully meet 49 CFR part 26 eligibility standards are permitted to participate as DBEs;
- 5) To help remove barriers to the participation of DBEs in DOT assisted contracts;
- 6) To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Director of the Department of Executive Administration (Director), reports directly to the Mayor and is responsible for managing the City's public works and procurement processes, including programs affecting these processes, such as the Federal Disadvantaged Business Enterprise Program. The Director has delegated to the Director of Contracting Services (CSD) to be the DBE Liaison Officer. On behalf of the City, the Director of CSD will ensure all aspects of the DBE Program are implemented in accordance with governing regulations. CSD will manage the day to day operations associated with implementing the DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Seattle in its financial assistance agreements with the Department of Transportation.

The City of Seattle has disseminated this policy statement to all components of our organization. We will distribute this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through posting on The Department of Executive Administration's website at <http://www.seattle.gov/contracting/federal.htm>

Signature of City of Seattle DBE Liaison Officer
Linneth Riley-Hall, Director- Contracting Services Division

Date:

SUBPART A—GENERAL REQUIREMENTS

Section 26.1 OBJECTIVES

The objectives are found in the policy statement on the first page of this program.

Section 26.3 APPLICABILITY

The City of Seattle is the recipient of federal transit funds authorized by Title III of SAFETEA-LU, Pub. L. 109-59 or by Federal transit laws in Title 49, U.S. Code, or Titles 1, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 DEFINITIONS

The City of Seattle will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 NON-DISCRIMINATION REQUIREMENTS

The City of Seattle will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, the City of Seattle will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 RECORD KEEPING REQUIREMENTS

We will report DBE participation to DOT on a semi-annual basis, using the Uniform Report of DBE Awards or Payments as provided in 49CFR Part 26, App. B. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List 26.11(c)

The City of Seattle will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder list will include the name, address, DBE or non-DBE status, age of firm, and annual gross receipts of firms. The City of Seattle will collect this information in the following way:

The City of Seattle will include a clause in each of its DOT assisted contracts requiring the prime bidders to submit the names and addresses of all subcontractors that provided a quote to them, whether accepted or not. This list may be submitted with the bid or within seventy-two hours of bid submittal. The City relies on OMWBE for DBE certification regarding subcontractors' status as DBE or non-DBE, age of firm and annual gross receipts.

Section 26.13 FEDERAL FINANCIAL ASSISTANCE AGREEMENT

Assurance: 26.13(a)

The City of Seattle has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

The City of Seattle shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Seattle of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13(b)

The City will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

SUBPART B—ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE PROGRAM UPDATE

The City of Seattle has received grants for the South Lake Union Streetcar (Extension Design) (the “Streetcar”) and the Monorail Rehab (Conductor Rail) (the “Monorail”) Projects. No other contracts with eligible DBE funds have been executed. The City of Seattle will carry out this program established in 2009-2010 until all FTA funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 POLICY STATEMENT

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE LIAISON OFFICER (DBELO)

The City of Seattle has designated the Director of the Contracting Services Division (CSD) as the City’s DBE Liaison Officer. As of January 2009, the current Director of CSD is:

Linneth Riley-Hall, Director, Contracting Services Division
City of Seattle
Seattle Municipal Tower, Suite 4112
P.O. Box 94687
Seattle, WA 98124-4687
206-684-4548
linneth.riley-hall@seattle.gov

The DBE Liaison Officer is responsible for ensuring that the City’s DBE Program is developed, implemented, and monitored in accordance with the requirements of 49 CFR Part 26. The DBELO, through the Director of the Department of Executive Administration, has direct, independent access to the Mayor concerning DBE program matters. The DBELO will advise the Mayor/City Council on DBE matters and achievement. (An organization chart displaying the DBELO’s position in the organization is found in Attachment A to this program.)

The DBELO has delegated the day to day program development and administrative duties, including monitoring, to the Department of Executive Administration’s Contracting Manager for the Contracting Services Division. The Contracting Services Division’s responsibilities regarding DBE include:

- 1) Gather and report statistical data and other information as required by DOT.

- 2) Review purchasing or contracting requisitions for compliance with this program.
- 3) Work with departments receiving DOT financial assistance to set the City's overall annual goals, if any.
- 4) Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
- 5) Identify contracts and procurements so that DBE goals, if any, are included in solicitations (both race-neutral methods and contract specific goals, if any, attainment and identifies ways to improve progress.)
- 6) Analyze City of Seattle's progress toward attainment and identify ways to improve progress.
- 7) Participate in pre-bid meetings.
- 8) Participate in internal and external meetings and committees addressing DBE matters.
- 9) Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- 10) Plan and participate in DBE training seminars.
- 11) Ensure DBEs participating on City of Seattle contracts are certified by the State of Washington Office of Minority and Women Business Enterprises, the authority in Washington State authorized to certify firms using the Uniform Certification Process.
- 12) Provide outreach to DBEs and community organizations to advise them of opportunities.

Attachment B outlines the organizational chart for the Contracting Manager's work unit.

Section 26.27 DBE FINANCIAL INSTITUTIONS

The City of Seattle performed research in an attempt to identify financial institutions owned and controlled by socially and economically disadvantaged individuals in the community with the purpose that if such firms were identified, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. The City of Seattle consulted other agencies DBE Plans in the State of Washington, including Washington State Department of Transportation, King County, the City of Everett, and Sound Transit and noted that no agency was able to identify a financial institution meeting the DBE criteria. In addition, the City of Seattle consulted the OMWBE directory to determine if there were any such firms in the State of Washington. The City of Seattle found no qualifying institutions. If a DBE owned financial institution should become established within the community, the City of Seattle will make every effort to comply with the administrative requirements, and will encourage prime contractors to do likewise.

Section 26.29 PROMPT PAYMENT MECHANISMS

The City of Seattle includes the prompt pay provisions listed below in each DOT-assisted prime contract. This clause applies to both DBE and non-DBE subcontracts.

PROMPT PAYMENT REQUIREMENTS:

The following procedure shall apply to all subcontracts entered into as a part of this Contract. This provision applies to both DBE and non-DBE subcontracts.

PROGRESS PAYMENTS

Within ten working days of receipt of a progress payment from the City of Seattle that includes dollars for work performed by a subcontractor, the Contractor shall pay such subcontractor, less any applicable retainage, out of such amounts as are paid by the City of Seattle, for all work satisfactorily completed by the subcontractor, provided that the subcontractor has complied with the applicable terms of its subcontract with the Contractor. If the Contractor fails or neglects to make such payment within ten working days, the Contractor shall pay to the subcontractor an interest penalty computed at one percent per month on amounts due for the period beginning on the day after the required payment date and ending on the day on which payment of the amount due is made.

UNSATISFACTORY PERFORMANCE BY SUBCONTRACTOR

If the Contractor determines that the subcontractor did not satisfactorily perform all or a portion of the work identified in the progress payment, the Contractor shall provide written notification to the subcontractor and City of Seattle of the remedial actions that must be taken by the subcontractor as soon as practicable after determining the cause for withholding payment to the subcontractor, but before the due date for the subcontractor payment. The Contractor shall pay the subcontractor within eight working days after the subcontractor satisfactorily completes the remedial action identified in the notice. If the Contractor does not comply with the remedial action notice and payment requirements of this Section, the Contractor shall pay the subcontractor interest on the withheld amount from the eighth working day at an interest rate that is equal to the amount set forth in RCW 39.76.011(1) until payment is made.

RETAINAGE PAYMENT

Under 49 CFR 26.29(b)(3) the City must establish, as part of its DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor. The City must also ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The City will use the following method to comply with this requirement:

The City will hold retainage from the Contractor and provide for prompt and regular incremental acceptances of portions of the contract and pay retainage to the Contractor based on these acceptances. Under this contract, the Contractor is obligated to pay all retainage owed to the Subcontractor for satisfactory completion of the accepted work within 30 days after the City's payment to the Contractor. DEA will monitor this contract to ensure compliance with this requirement.

The Subcontractor shall make a written request to the Contractor and the City of Seattle for the release of the Subcontractor's retainage or retainage bond. Within ten working days of the request, the Contractor and the City shall determine if the subcontract has been satisfactorily completed and the Contractor shall inform the Subcontractor, in writing, of the Contractor's and the City's determination.

If the Contractor determines that the subcontract has been satisfactorily completed, the Subcontractor's retainage or retainage bond shall be released by the Contractor no later than 30 days from the date of the Written Notice.

If the Contractor fails to pay all retainage as provided in the contract, then The City will withhold payment(s) from the Contractor until the Contractor has verified that the DBE subcontractor's retainage has been promptly paid in accordance with the contract.

If the Contractor and the City of Seattle determine that the Subcontractor has not achieved satisfactory completion of the subcontract, the Contractor and the City of Seattle must provide the Subcontractor with Written Notice, stating specifically why the subcontract work is not satisfactorily completed and what has to be done to remedy the situation in order to achieve satisfactory completion. Once the Contractor and City determine that the Subcontractor has achieved satisfactory completion by remedying the discrepancies identified in the Written Notice, the Contractor shall release the Subcontractor's retainage or retainage bond within eight working days.

In determining whether satisfactory completion has been achieved, the Contractor and the City of Seattle may require the Subcontractor to provide documentation such as any applicable certifications and releases, showing for example payment in full to those parties involved in the Subcontractor's work. The Contractor may also require any documentation from the Subcontractor that is required by the subcontract or by the Contract between the Contractor and City of Seattle or by law such as Affidavits of Wages Paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the Subcontractor's work.

Conditions: This clause does not create a contractual relationship between the City of Seattle and any Subcontractor. Also, it is not intended to bestow upon any Subcontractor, the status of a third-party beneficiary to the Contract between the City of Seattle and the Contractor.

The Contractor will include in each of its subcontracts a provision setting forth the payment and interest penalty clause of this Section. In addition, the Contractor shall require that its subcontractors include such a payment and interest penalty clause in each of their subcontracts.

Section 26.31 DBE DIRECTORY

The City of Seattle uses the State of Washington's Office of Minority and Women's Business Enterprises (OMWBE) directory to identify firms who are certified as disadvantaged business enterprises. The directory is published in hard bound copy quarterly and made available to contractors, proposal holders, and bidders to facilitate certification status of firms in the construction, consultant, as well as goods and services industries. The directory lists the firm's name, address, phone number, date of the most recent certification, North American Industrial Classification System Codes (NAICS) and the type of work the firm has been certified for as a DBE firm.

In addition, the directory is accessible on the internet. OMWBE updates the database daily with any action or change that effects businesses listed in the *Directory of Certified Minority, Women, and Disadvantaged Business Enterprises*. The Directory may be found by accessing OMWBE's website at http://www.omwbe.wa.gov/certification/certification_directory.shtml

The City of Seattle includes information regarding the directory and how to access it in its DOT assisted bidding specifications/proposals. This directory may then be used by potential bidders in the identification of available DBE subcontractors.

Section 26.33 OVERCONCENTRATION

The City of Seattle has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 BUSINESS DEVELOPMENT PROGRAMS

The City of Seattle sponsors and supports business development programs within the community or through its own programs. The City contracts with the Contractors Development and Competitiveness Center, a non-profit organization, to provide services that benefit historically underutilized businesses. This organization provides outreach and technical assistance to historically underutilized businesses, including the following: Internet access to plans and specifications, training workshops, assistance with bid packaging, assistance with joint venture partnering, one-on-one counseling and mentorship, educational programs with certifications, loan packaging and procurement, governmental contract procurement, networking assistance, and business consulting. One objective is to improve the competitiveness of these firms so they can compete and succeed on their own in the long-term.

The City also supports the Turner School of Construction. This construction program provides training to minority and women businesses (many of whom are either DBEs or are eligible for DBE certification). The program includes technical, administrative, and managerial training. The objective is to provide these businesses with the tools and skills required to successfully compete in the marketplace.

Another business development initiative the City is involved in includes the hosting of forums, both on its own and with its regional partners, to provide outreach and technical procurement information to the contracting community.

Section 26.37 MONITORING AND ENFORCEMENT MECHANISMS

The City of Seattle will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. We will accomplish this task through the prime's submission of periodic reports documenting payments to DBE firms and performing on-site reviews to observe the work performed by DBEs to ensure that the DBE is performing a commercially useful

- function. The City will require the primes to notify and obtain City concurrence regarding any action the prime may initiate that affects a DBE firm's participation on the contract. See also Subpart C---Good Faith Efforts, 26.53(f)
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. See Subpart F-----Compliance and Enforcement for more information regarding this reporting requirement.
 5. The City includes the following language in its contract provisions concerning potential ramifications to primes for not complying with the DBE requirements:

Penalties for Non-Compliance

When a contractor violates the DBE provisions of the contract, the City of Seattle may incur damages. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations as well as loss of federal funding. Damages attributable to a contractor's violations of the DBE provisions may be deducted from progress payments due to the contractor or from the retainage withheld by the City of Seattle as allowed by RCW 60.28. Before any money is withheld, the contractor, will be provided with a notice of the basis of the violations and an opportunity to respond.

The City of Seattle's decision to recover damages for a DBE violation does not limit its ability to suspend, terminate the contract, and debar the contractor. The City of Seattle may also seek other remedies consistent with federal or state law and refer the contractor to state or federal authorities for additional sanctions.

SUBPART C-----GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 SET-ASIDES OR QUOTAS

The City of Seattle does not use set-asides or quotas in any way in the administration of this DBE program.

Section 26.45 OVERALL GOALS

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment C to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the City of Seattle will submit its overall goal to DOT on August 1 of each year, unless the City receives permission from a DOT agency to submit the goal at a different time. Before establishing the overall goal each year, the City of Seattle will consult with other agencies receiving DOT assistance, DBE and non-DBE prime and sub - contractors, DBE and non-DBE prime and sub-consultants, and organizations, such as the OMWBE supporting DBE and non-DBE contractors, to obtain information concerning the

availability of disadvantaged and nondisadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Seattle's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our Contracting Services Division's office for 30 days following the date of the notice, and informing the public that the City and DOT will accept comments on the goals for 45 days from the date of the notice. The City will publish the notice in the City's Official Newspaper (the Daily Journal of Commerce, the DJC) and will post the notice on the Contracting Services Division's website. <http://www.seattle.gov/contracting/federal.htm>

Customarily, our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we are delayed in submitting the goal or we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.49 TRANSIT VEHICLE MANUFACTURERS GOALS

This section does not apply to the City of Seattle as no transit vehicles will be purchased using DOT funds.

Section 26.51(a-c) BREAKOUT OF ESTIMATED RACE-NEUTRAL AND RACE CONSCIOUS PARTICIPATION

The breakout of estimated race-neutral and race-conscious participation, if any, can be found in Attachment C to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) CONTRACT GOALS

This section will apply only after the City of Seattle has demonstrated that it may lawfully utilize race-conscious goals.

The City of Seattle will use contract goals to meet any portion of the overall goal the City of Seattle does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The City of Seattle will establish contract goals only on those DOT-assisted contracts that have subcontracting opportunities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract, (e.g., type and location of work, subcontractible elements and availability of DBEs to perform the particular type of work.) We will divide the subcontractible elements in half so half may be considered for potential DBE participation and half for non-DBE participation.

The City of Seattle will express contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 GOOD FAITH EFFORTS PROCEDURES

This section will apply only after the City of Seattle has demonstrated that it may lawfully utilize race-conscious goals.

Demonstration of good faith efforts (26.53(a) & (c)) when contract goals are established:

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The Contracting Manager or his/her designee are responsible for rendering final determinations regarding whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts in order to be regarded as responsible:

The City will ensure that all information is complete and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

The City of Seattle treats bidder/offeror's compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information with its bid/offer:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment and

6. If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration (26.53(d))

Within five business days of being informed by the City of Seattle that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following Reconsideration Official:

Director, Contracting Services
Contracting Services Division
Department of Executive Administration
City of Seattle
SMT 4112
P.O. Box 94687
Seattle, WA 94687
contractingservices@seattle.gov

The Administrative Reconsideration Official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the contract goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the contract goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The City of Seattle will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The City will require the prime contractor to notify the Contracting Manager's assigned staff immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the City will require the prime contractor to obtain its prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply within the time specified, the Owner may stop work or withhold payment until satisfactory action has been taken. If the contractor still fails to comply, the contractor may be found in material breach of contract and the Owner may terminate the contract.

Sample Bid Specification Language

The City of Seattle will include the following language in its DOT assisted contracts to inform bidders/offerors of the requirements to make good faith efforts.

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Seattle to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE.

A DBE contract goal of (insert goal) percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 COUNTING DBE PARTICIPATION

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. Only the work performed by the DBE will be counted toward the City's overall goal and, if applicable, toward any aspirational contract goal.

SUBPART D---CERTIFICATION STANDARDS

Section 26.61-26.73 CERTIFICATION PROCESS

The State of Washington's Office of Minority and Women's Business Enterprises (OMWBE) is the only agency in the State that is authorized to certify a firm as a DBE. They are required to utilize certification procedures that meet all federal requirements in accordance with 49 CFR Part 26. The City of Seattle participates in the annual funding of the office and therefore has access to the directory of certified DBEs published by the Office and updated on a regular basis. The City uses the information provided and maintained by OMWBE in evaluating a firm's eligibility to participate as a DBE on a DOT funded contract.

SUBPART E----CERTIFICATION PROCEDURES

Section 26.81 UNIFIED CERTIFICATION PROGRAMS

The City of Seattle is not a member of the UCP at this time. As stated above, the City of Seattle relies on the OMWBE, who is a member of the UCP, for its information concerning the DBE certification status of firms participating on DOT funded contracts.

Section 26.83 PROCEDURES FOR CERTIFICATION DECISIONS

Not applicable—see above

Section 26.85, 26.87, and 26.89 DENIALS OF INITIAL REQUESTS FOR CERTIFICATION, REMOVAL OF A DBES ELIGIBILITY, and CERTIFICATION APPEALS

In the event the City of Seattle receives notice of a firm's DBE eligibility status, it will immediately notify the OMWBE. OMWBE has the authority to investigate and resolve any eligibility issue in accordance with 49 CFR Part 26. The City of Seattle will cooperate to the fullest extent possible with OMWBE in any such investigations involving firms engaged on City DOT assisted contracts, including providing all available information for investigation.

SUBPART F---COMPLIANCE AND ENFORCEMENT

Section 26.109 INFORMATION, CONFIDENTIALITY, COOPERATION

We will safeguard from disclosing to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The City will adhere to the requirements of RCW 42.17 in evaluating disclosure requests.

Because the City is not the certifying authority for firms, there should be no reason for the City to collect any personal financial information as required for the personal net worth requirements. In the event the City has such information in its possession and a disclosure request is received, the City shall not release the information to a third party without the written consent of the submitter, unless required by law to do so.

Monitoring Payments to DBEs

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

We will require the prime to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Seattle or DOT. This reporting requirement also extends to any certified DBE subcontractor.

END OF DBE PLAN